

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

MAR 28 2000

Michael N. Milby
Clerk of Court

TONI PALMER,

§

Plaintiff,

§

§

§

V.

CIVIL ACTION NO. H-99-4449

§

§

§

GENEVA LEASING, INC., and
FRANK CUCCO,

§

Defendants.

§

§

ORDER

Before the Magistrate Judge upon referral from the District Judge is Plaintiffs' Motion for Leave to File First Amended Class Action Complaint (Document No. 7). Defendants are opposed to the motion (Document No. 10).

The instant action was removed from state court, where Plaintiff Toni Palmer's live pleading at the time of removal was a First Amended Class Action Petition which alleged violations of the Truth in Lending Act, common law fraud, and violation of the Texas usury statutes. The First Amended Class Action Complaint which Plaintiff now seeks to file, adds Michael M. and Stacy A. Cecil as class representatives, generally alleges the same claims for violations of the Truth in Lending Act, and common law fraud, and substitutes the claim under Texas usury statutes with a claim for violations of Article 9 of the Texas Business and Commerce Code. Defendants oppose the amendment on the basis that: 1) Plaintiffs have not included all pertinent facts and allegations in their proposed amendment (e.g., Plaintiffs have not informed the Court that they have filed bankruptcy); 2) Plaintiffs have not carried their burden of establishing that an amendment is needed; 3) Plaintiffs have not provided adequate

#12

initial disclosures; and 4) Plaintiffs' claims against Defendant Frank Cucco individually are frivolous.

Leave to amend should be freely given. FED. R. CIV. P. 15(a). Leave may, however, be denied if the proposed amendment is untimely, if the amendment would be futile, or if the amendment would result in prejudice to the other parties. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Here, Defendants' arguments in opposition to Plaintiffs' Motion for Leave do not touch on the timeliness of the amendment, and do not raise any issue as to prejudice. Moreover, while Defendants argue that the claims against Defendant Frank Cucco are frivolous, there has been no showing, given the existence of such claims in the current pleadings, that the amendment proposed would be futile. Thus, based on the dictates of Rule 15(a), it is

ORDERED that Plaintiffs' Motion for Leave to File First Amended Class Action Complaint (Document No. 7) is GRANTED.

Signed at Houston, Texas, this 27th day of March, 2000.

Frances H. Stacy
FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE